

WEISS & JONES, L.L.P.  
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Attorneys for Plaintiff  
SHELTER ISLAND YACHTWAYS, LTD.  
a California Limited Partnership,  
dba SHELTER ISLAND BOATYARD

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

SHELTER ISLAND YACHTWAYS, LTD., a  
California Limited Partnership, dba SHELTER  
ISLAND BOATYARD,

Plaintiff,

v.

M/Y SUNDANCE, Official No. 521498, A  
HATTARAS MOTORYACHT OF  
APPROXIMATELY 33 FEET IN LENGTH  
AND 12 FEET IN BEAM, AND ALL OF HER  
ENGINES, TACKLE, ACCESSORIES,  
EQUIPMENT, FURNISHINGS AND  
APPURTENANCES, *in rem*,

Defendant.

Case No. 07-CV 2015 DMS (WMc)

IN ADMIRALTY

DECLARATION OF PHILIP E.  
WEISS IN SUPPORT OF MOTION  
FOR ORDER FOR  
INTERLOCUTORY VESSEL SALE  
AND AUTHORIZATION TO  
CREDIT BID

F.R.C.P. Supplemental Admiralty  
Rule E(9); 46 U.S.C. Sections 30101-  
31343

SUBMITTED ON PAPERS  
(Oral Arguments Not Requested)

I, Philip E. Weiss, declare under penalty of perjury under the laws of the United States  
and the State of California as follows:

1. I am admitted to practice in all Federal and State Courts located within the  
State of California, including the United States District Court for the Southern District of  
California. I am counsel of record for the Plaintiff in this action. The matters herein asserted

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1 are of my personal knowledge, and as to such matters I could and would competently testify  
2 thereto under oath, should I be called to do so.

3 2. On September 25, 2007 I caused a letter to be mailed to Wayne Oliver, addressed to  
4 the address reflected as his on U.S. Coast Guard records for the DEFENDANT VESSEL. A true  
5 and correct copy of this letter is attached hereto as Exhibit A. In this letter I made demand that  
6 the DEFENDANT VESSEL be immediately removed from PLAINTIFF's boatyard, and advised  
7 Mr. Oliver that lay day charges, calculated at the boatyard's usual rates, would be imposed until  
8 the DEFENDANT VESSEL was removed, and further that PLAINTIFF would seek the arrest of  
9 the trespassing DEFENDANT VESSEL if she was not removed within five days. This letter also  
10 urged Mr. Oliver to retain the services of an experienced maritime lawyer if he refused to remove  
11 his vessel or had doubts as to PLAINTIFF's right to seek the arrest of the offending vessel.

12 3. Having received no response to his letter, I contacted Mr. Oliver by telephone on  
13 October 4, 2007 to discuss the situation. At that time Mr. Oliver indicated he would in fact  
14 remove the DEFENDANT VESSEL the following week. During this conversation I reminded  
15 Mr. Oliver that lay day fees were continuing to accrue at the rate of \$66.00 per day (calculated at  
16 the usual rate of \$2.00 per foot of boat length per day). He agreed he would pay the lay day  
17 charges, and also indicated he would reimburse PLAINTIFF for the attorneys' fees it incurred in  
18 connection with the instant matter. At this time Mr. Oliver indicated he would remove the vessel  
19 no later than the following Wednesday, October 10, 2007, and that he would pay the lay day  
20 charges and attorneys' fees on that date. In the interest of resolving the matter informally and  
21 avoiding an unnecessary use of the Court's valuable and limited resources, PLAINTIFF agreed  
22 to hold legal action in abeyance, to permit Mr. Oliver an opportunity to perform on his promises.  
23 Regrettably, he did not.

24 4. On October 10, 2007, the date by which Mr. Oliver was to have removed his  
25 vessel and paid all sums agreed due, he had neither removed the DEFENDANT VESSEL nor  
26 contacted PLAINTIFF or its attorney to explain why he had not done so, nor paid the sums  
27 agreed due. Accordingly, I again called Mr. Oliver, to inquire as to his intentions. Mr. Oliver  
28 advised he had been unable to move the vessel because his car "broke down" in Oregon, where

1 he apparently now resides. Asked why he did not then fly down to resolve the problem (which  
2 after all was growing larger by at least \$66.00 per day), Mr. Oliver told me he did not have the  
3 time to fly down because he had to go to a Veteran's Hospital. He did not explain, however, how  
4 he would have had time to drive to San Diego from Oregon without interfering with his hospital  
5 appointment, yet did not have the time to fly to San Diego. Mr. Oliver advised he was "working  
6 on getting the money" necessary to satisfy PLAINTIFF's claim. When asked, Mr. Oliver  
7 admitted he had not made arrangements for the accommodation of the DEFENDANT VESSEL  
8 once he removed it from PLAINTIFF's boatyard. When I asked him how long it would be  
9 before he would obtain the funds necessary to resolve this matter (pay lay day fees, remove his  
10 vessel and pay, as agreed, attorneys' fees), he could not or would not provide any estimate. I then  
11 then informed Mr. Oliver that the DEFENDANT VESSEL was continuing to interfere with  
12 boatyard operations, and that if she was not removed immediately PLAINTIFF would be left  
13 with no option but to seek the assistance of the Court. Mr. Oliver reiterated he "can't say when  
14 [he] will get the money" necessary to satisfy PLAINTIFF's claim and remove his boat.

15 5. I conducted today a search of the Yachtworld.com database (said to contain listings  
16 on over 118,000 vessels nationwide) for all listed 1968 34-foot Hatteras motoryachts. This search  
17 yielded only a single listing, with an asking price of \$24,900.00. A true and correct copy of this  
18 listing is attached hereto as Exhibit B. In contrast to the DEFENDANT VESSEL, the vessel listed at  
19 Yachtworld.com is said to be "pretty outside" with an interior in "good" condition, and with Chrysler  
20 440 engines that reportedly run "real good."

21 Executed this 25th day of March, 2008 at San Diego, California.

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\_\_\_\_\_  
s/Philip E. Weiss

Philip E. Weiss  
Attorney for Plaintiff  
Shelter Island Yachtways, Ltd.  
dba Shelter Island Boatyard  
E-mail: shiplaw@earthlink.net

September 25, 2007

F.B514716015US

Mr. Wayne Oliver  
3653 South Highway 99 (Medford)  
Post Office Box 1085  
Jacksonville, Oregon 97530

Re: Shelter Island Boatyard adv. M/Y SUNDANCE, Oliver  
Demand for Immediate Removal of Trespassing Vessel; Vessel Arrest

Dear Mr. Oliver:

I represent Shelter Island Boatyard in connection with the referenced matter. The above referenced vessel, a Hattaras motoryacht of approximately 33 feet in length and 12 feet in beam, U.S.C.G. Official No. 521498 was **abandoned at my client's boatyard** on September 17, 2007.

This vessel, known as M/Y SUNDANCE, has no contractual or other legal authority to occupy space at my client's boatyard. Maritime law recognizes her as a *trespasser*. The trespass of a vessel gives rise to a maritime lien against her, which may be enforced by way of a vessel arrest accomplished in Federal Court. In such event, the very substantial costs of the arrest are fully recoverable. If you force us to arrest your vessel you can bet your life that we will seek recovery of every penny of the associated costs. If you doubt our ability to do this I suggest you immediately retain the services of an experienced maritime attorney.

In addition, without waiving my client's objection to the trespass of your boat, my client is assessing **lay day charges at its usual rate of \$2.00 per foot per day**. This amount to \$66.00 per day for your vessel. As a result of these unpaid charges, maritime "necessaries" lien has also arisen against your vessel, which also is enforceable in admiralty in a vessel arrest action. Be advised my client does not assume, and specifically disclaims, any custodial or any other duty with respect to your boat.

It is nothing short of *outrageous* that you have abandoned your vessel or allowed her to be abandoned at my client's facility. This is akin to someone parking an old wreck of an R.V. in front of your house and simply walking away. We will not allow your scow of a boat to become my client's problem. ***I have been instructed that if the vessel is not removed within five calendar days from the date of this letter I am to submit vessel arrest papers in the U.S. Federal District Court in San Diego, without further notice, naming you and your vessel as defendants.*** If this becomes necessary I will aggressively pursue vindication of my client's property rights, which you have seriously invaded by permitting your vessel to trespass at my client's boatyard.

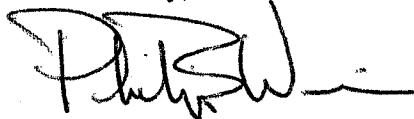
If you have any thoughts of disregarding this letter I would urge you in the strongest possible terms to retain the services of a maritime lawyer ***immediately***, so he or she can explain

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George M. Jones ▼ Los Angeles County Office  
429 Shoreline Village Drive, Suite N ▼ Long Beach, California 90802  
562.435.9501 ▼ Fax 562.435.9581  
e-mail: gjones@weissjones.com

to you exactly how any litigation is likely to "play out." Not well for you and your boat, I assure you. **There will be no further notice or warning. If for any reason your boat is not removed by midnight on October 1, 2007 the next communication you will receive is service of legal papers, which you will be required to respond to.** Remove your boat immediately or we will hold you and her accountable, simple as that. If I have not made myself perfectly clear, or if you or any lawyer you retain have any questions, I will look forward to hearing from you or such lawyer immediately to discuss them. This is a matter of utmost urgency. No excuses will be accepted. To avoid becoming a defendant in a federal action, you must take the action demanded above now.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip E. Weiss", with a horizontal line extending to the right.

Philip E. Weiss

cc: Client



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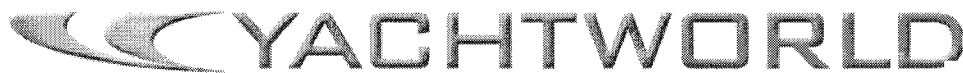
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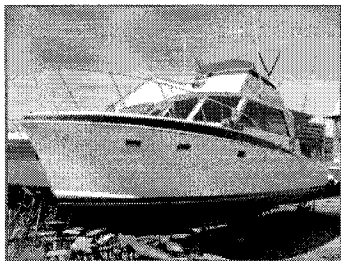
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### 34' Hatteras Sport fish / AWL Grip

- Year: 1968
- **Current Price: US\$ 24,900**
- Located In Mattapoisett, MA
- Hull Material: Fiberglass
- Engine/Fuel Type: Twin Gas/Petrol
- YW# 3024-1784964

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Other photos: [Transom](#), [Deck](#), [Salon](#), [Cockpit](#), [Running Gear](#), [Engine room](#).

One of my favorites, Hargrave design, heavy glass, good cruise, big enough to be stable but not so big it busts your wallet to store and maintain and your back to clean. She looks pretty outside, original interior is in good shape, Chrysler 440's run real good, canvas is missing. She needs a little here and there but is very complete and usable, these are well worth an effort.

Adam 6508-951-4869

Contact [B.L.M. Yacht Sales Ltd.](#)

1 Ferry Street  
Fall River, MA 02721 USA

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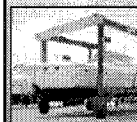
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EXHIBIT

**B**